

Message Text

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STADIS/////////
EEC, PASS TO ASST. SECRETARY PATSY T. MINK

E.O. 11652: N/A

TAGS: EWWT, OVIP

SUBJECT: CONGRESSIONAL TESTIMONY BY ASSISTANT SECRETARY MINK

1. REVISED SCHEDULE FOR YOUR APPEARANCE BEFORE THE
SENATE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION ON
MONDAY, APRIL 17, NECESSITATES TRANSMITTING YOUR TESTIMONY
TO OMB FOR CLEARANCE NO LATER THAN MORNING OF APRIL 12.
FOLLOWING IS A STAFF DRAFT WHICH HAS NOT YET RECEIVED
FINAL DEPARTMENT CLEARANCE, BUT NO SUBSTANTIVE PROBLEMS
HAVE SURFACED. SENATOR MUSKIE'S EXPECTED SUPERFUND BILL
HAS NOT YET BEEN INTRODUCED. A LAST MINUTE ADJUSTMENT
MAY BE NECESSARY WHEN AND IF INTRODUCED, BUT YOUR TESTIMONY
HAS BEEN DRAFTED IN THE LIGHT OF THE EARLIER BILLINGS
OUTLINE, SO HOPEFULLY ANY ADJUSTMENTS WILL BE MINOR.

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2. QUOTE

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO HAVE THE OPPORTUNITY TO APPEAR BEFORE THE
SUBCOMMITTEE TO TESTIFY AS TO THE FOREIGN POLICY IMPLICA-
TIONS OF THE ADMINISTRATION'S POSITION ON S. 1187, S. 2083,
AND H.R. 6803, BILLS WHICH WOULD ESTABLISH A COMPREHENSIVE
LIABILITY AND COMPENSATION REGIME FOR OIL POLLUTION DAMAGE.

I DO NOT INTEND TO TAKE THE TIME OF THE SUBCOMMITTEE BY A FURTHER EXHAUSTIVE ANALYSIS OF THE BILLS BEFORE THE SUBCOMMITTEE. I WOULD PROPOSE INSTEAD TO CONFINE MY REMARKS TO THE BROADER FOREIGN POLICY ASPECTS OF THE MATTERS BEFORE THE SUBCOMMITTEE, WITH AN EMPHASIS ON RESPONDING TO THE QUESTIONS POSED BY SENATOR MUSKIE IN HIS TELEGRAM OF MARCH 30, 1978, TO MR. CHRISTOPHER, DEPUTY SECRETARY OF STATE.

AS NOTED BY MR. BUTCHMAN, THE ADMINISTRATION BILL, S.1187, THE COMPREHENSIVE OIL POLLUTION LIABILITY AND COMPENSATION ACT, IS AN INTEGRAL PART OF THE PRESIDENT'S INTERNATIONAL AND DOMESTIC INITIATIVES ANNOUNCED ON MARCH 17, 1977, IN THE WAKE OF A SERIES OF TANKER ACCIDENTS THE PREVIOUS WINTER. THIS DOMESTIC LEGISLATION, IF CERTAIN CAUTIONS ARE TAKEN, IS FULLY CONSISTENT WITH OUR CONTINUING EFFORTS TO ACHIEVE STRONG AND EFFECTIVE INTERNATIONAL STANDARDS WITH RESPECT TO THE CONSTRUCTION, EQUIPMENT, MANNING AND OPERATION OF TANKERS. THE RECENT DISASTROUS OIL SPILL OFF THE COAST OF FRANCE WOULD, I HOPE, GIVE AN ADDED IMPETUS TO THE SUBCOMMITTEE'S ACTION ON COMPREHENSIVE LEGISLATION DEALING WITH LIABILITY AND COMPENSATION IN THE EVENT OF OIL SPILLS.

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I WOULD BE NAIVE TO SUGGEST THAT OUR EFFORTS ABROAD AND AT HOME WOULD ULTIMATELY ELIMINATE ALL DANGERS OF OIL SPILLS -- WE CAN ONLY DO OUR BEST, AND WE ARE WORKING TOWARD THAT END. AT THE SAME TIME, WE MUST RECOGNIZE THAT ACCIDENTS WILL HAPPEN -- THAT MISTAKES WILL BE MADE -- AND IT IS URGENT THAT WE MOVE AHEAD WITH CAREFULLY FASHIONED LEGISLATION TO PROVIDE FOR MECHANISMS PERMITTING PROMPT RESPONSE BY WAY OF CLEANUP OF SPILLS AND RECOMPENSE BY THE PROPER PARTIES TO THOSE WHO ARE INJURED. FROM THE FOREIGN POLICY VIEWPOINT, THE UNITED STATES HAS ALWAYS BEEN IN THE FOREFRONT OF THE INTERNATIONAL COMMUNITY IN THE DEVELOPMENT OF BOTH EFFECTIVE INTERNATIONAL STANDARDS AND IN THE DEVELOPMENT OF RESPONSIBLE DOMESTIC REQUIREMENTS WHICH SERVE AS A MODEL FOR THE DEVELOPMENT OF INTERNATIONALLY COOPERATIVE AND CONSISTENT APPROACHES, WHILE AT THE SAME TIME AVOIDING A MULTITUDE OF CONFLICTING DOMESTIC REQUIREMENTS WHICH COULD UNNECESSARILY COMPLICATE, IF NOT IMPEDE, THE EXPEDITIOUS MOVEMENT OF VITAL COMMODITIES BY SEA. THE DEPARTMENT OF STATE BELIEVES THAT THE ADMINISTRATION'S BILL IS RESPONSIBLE, AND COULD WELL SERVE AS YET ANOTHER MODEL FOR THE INTERNATIONAL COMMUNITY.

MR. CHAIRMAN, LET ME NOW TURN TO THE QUESTIONS YOU POSED TO MR. CHRISTOPHER IN YOUR TELEGRAM OF MARCH 30. THESE

POINTS WILL SERVE AS THE OUTLINE FOR THE REMAINDER OF MY

REMARKS.

FIRST, YOU INQUIRE AS TO FEDERAL PREEMPTION OF STATE LAW WITH RESPECT TO LIABILITY, TRANSFER TAXES, AND AUTHORITY TO CLEAN UP AND ASSESS COSTS AND DAMAGES. YOU ALSO INQUIRED INTO HOW THE SUPERFUND WOULD BE RESPONSIVE TO SMALL CLAIMS IN THE EVENT OF PREEMPTION.

MR. BUTCHMAN HAS NOTED SEVERAL ARGUMENTS WHICH CAUSED THE LIMITED OFFICIAL USE
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ADMINISTRATION TO CONCLUDE THAT PREEMPTION OF STATE TRANSFER TAXES ON THE MOVEMENT OF OIL AND STATE LIABILITY LIMITATIONS AND STANDARDS OF LIABILITY WAS INDISPENSABLE TO THE EFFECTIVE OPERATION OF A COMPREHENSIVE NATIONAL SCHEME. FROM A FOREIGN POLICY PERSPECTIVE, THE DEPARTMENT OF STATE FULLY SUPPORTS THE ADMINISTRATION'S POSITION. IF THE FEDERAL SYSTEM IS EFFECTIVE AND RESPONSIVE, AND WE BELIEVE THAT UNDER THE ADMINISTRATION'S BILL IT WILL BE, THEN THERE IS SIMPLY NO NECESSITY FOR OVERLAPPING AND POTENTIALLY INCONSISTENT RULES OF THE GAME. OIL SPILLS DO NOT RECOGNIZE STATE BOUNDARIES. THE BURDENS ON SHIPPERS OF OIL INHERENT IN PROVIDING FOR THEIR PROSPECTIVE LIABILITY UNDER DIFFERING STATE AND FEDERAL REQUIREMENTS WOULD POSE AN UNNECESSARY EXPENSE ON THE MOVEMENT OF OIL, AND, IN EXTREME CIRCUMSTANCES, COULD POSE REAL IMPEDIMENTS TO THE MOVEMENT OF THAT OIL.

MR. CHAIRMAN, ONE OF THE MAJOR THRUSTS OF THE ADMINISTRATION BILL IS TO PROMPTLY, EFFECTIVELY, AND FULLY RESPOND TO SMALL CLAIMS. THE BILL PROVIDES FOR PROMPT ON-SCENE SETTLEMENT OF SMALL CLAIMS WITHOUT INVOLVED ADMINISTRATIVE PROCEDURES. THE DESIGNATED SOURCE OF THE POLLUTION, TO WHOM CLAIMS ARE INITIALLY PRESENTED, IS ENCOURAGED TO PAY PROMPTLY AND EQUITABLY, AS HE MUST PAY COSTS AND INTEREST IF HE FAILS TO DO SO. YOU MAY BE ASSURED THAT LOCAL ADJUSTORS UNDER CONTRACT TO THE FUND WILL HAVE AMPLE AUTHORITY TO SETTLE THESE SMALL CLAIMS WITHOUT HAVING TO OBTAIN PRIOR APPROVAL. AS I STATED EARLIER, MY RESPONSE TO THIS QUESTION BY SENATOR MUSKIE MUST OF COURSE ASSUME THAT THE ADMINISTRATION OF THE FUND BY THE FEDERAL GOVERNMENT WILL CAUSE IT TO BE PROMPTLY AND EQUITABLY RESPONSIVE TO ALL CLAIMANTS, REGARDLESS OF THE SIZE OF THE CLAIM, AS YOU WERE ASSURED BY MR. BUTCHMAN,
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IF IN PRACTICE, AFTER THE SYSTEM HAS FUNCTIONED FOR A REASONABLE PERIOD OF TIME, THE CONGRESS SHOULD FOR SOME

REASON QUESTION THE RESPONSIVENESS OF THE FEDERAL SYSTEM, THEN OBVIOUSLY THE CONGRESS COULD TAKE ANOTHER LOOK AT THE QUESTION OF PREEMPTION.

SECONDLY, SENATOR MUSKIE'S TELEGRAM INQUIRES INTO WHETHER COSTS ASSOCIATED WITH SPILLS OF HAZARDOUS SUBSTANCES, BOTH REMOVABLE AND NONREMOVABLE AS DEFINED IN SECTION 311 OF THE FWPCA AS AMENDED BY THE CLEAN WATER ACT OF 1977, SHOULD BE INCLUDED WITHIN THE SUPERFUND STRUCTURE.

MR. CHAIRMAN, THIS QUESTION IS NOT ONE SO MUCH OF FOREIGN POLICY AS ONE OF DOMESTIC WORKABILITY. MUCH TIME, THOUGHT AND EFFORT HAVE GONE INTO THE ADMINISTRATION'S PROPOSAL DEALING WITH THE PRESSING ISSUE OF LIABILITY AND COMPENSATION FOR DAMAGE CAUSED BY OIL POLLUTION, AND A RESPONSIBLE SYSTEM FOR PROVIDING FOR THE ESTABLISHMENT OF A FUND TO RESPOND TO OIL SPILLS AND DAMAGE THEY MIGHT CAUSE. I MUST GRANT THAT ONE OF THE NEXT STEPS THAT SHOULD BE TAKEN IS THROUGH CONSIDERATION OF THE MATTER OF SPILLS OF HAZARDOUS SUBSTANCES. BUT, AS IT NOW STANDS, THE ADMINISTRATION PREFERS TO MOVE AHEAD WITH OIL POLLUTION WHILE GIVING POLLUTION BY HAZARDOUS SUBSTANCES THE CONSIDERATION IT TOO DESERVES. AS POINTED OUT BY MR. BUTCHMAN, NOT ONLY IS OUR EXPERIENCE IN THIS AREA MORE LIMITED, BUT A PRESSING NEED FOR LEGISLATION IN THIS AREA HAS NOT BEEN DEMONSTRATED. FURTHERMORE, AGAIN AS NOTED BY MR. BUTCHMAN, THE RAMIFICATIONS OF APPLYING FUNDS DERIVED FROM THE TRANSFER OF OIL TO SPILLS OF OTHER SUBSTANCES HAVE NOT YET BEEN CAREFULLY CONSIDERED.

IN YOUR THIRD QUESTION, MR. CHAIRMAN, YOU INQUIRE INTO THE RELATIONSHIP BETWEEN THE RECENTLY ENACTED CLEAN WATER ACT OF 1977 AND THE SUPERFUND BILL, SPECIFICALLY AS TO THE AREAS OF LEVELS OF LIABILITY AND DEFENSES TO LIMITED OFFICIAL USE
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LIABILITY.

- MR. BUTCHMAN WENT INTO SOME DETAIL AS TO THIS QUESTION, AND I WILL NOT REPEAT HIS ANALYSIS. I WOULD SIMPLY NOTE MR. BUTCHMAN'S CONCLUSION THAT THE LIMITS OF LIABILITY IN THE BILLS BEFORE THE SUBCOMMITTEE ARE EQUAL TO OR GREATER THAN THOSE PROVIDED FOR IN SECTION 311 OF THE FWPCA, WITH THE EXCEPTION THAT THE SECRETARY OF TRANSPORTATION WOULD BE GIVEN SOME FLEXIBILITY IN THE ADMINISTRATION BILL AS TO THE LIABILITY LIMITATION APPLICABLE TO OWNERS AND OPERATORS OF CERTAIN FACILITIES (AS CONTRACTED WITH SHIPS). AS ALSO POINTED OUT BY MR. BUTCHMAN, THERE ARE SEVERAL DIFFERENT APPROACHES TAKEN AS TO DEFENSES TO LIABILITY AMONG SECTION 311 AND THE VARIOUS BILLS BEFORE THE SUBCOMMITTEE. FROM A FOREIGN POLICY

PERSPECTIVE, THE IMPORTANT QUESTION IS WHETHER THE DEFENSES ULTIMATELY ADOPTED ARE CLEAR, UNAMBIGUOUS, EASILY ADMINISTERED, AND CONDUCIVE TO PROMPT AND EQUITABLE SETTLEMENT.

WE BELIEVE THAT THE PROVISIONS OF THE ADMINISTRATION BILL MEET THESE TESTS.

LASTLY, MR. CHAIRMAN, YOU HAVE ASKED FOR OUR VIEWS ON THE GENERAL QUESTION OF THE VALIDITY OF THE SUPERFUND STRUCTURE IN ASSURING THAT THERE WILL BE SUFFICIENT INCENTIVE FOR TANKER AND FACILITY OPERATORS TO IMPOSE AN ADEQUATE STANDARD OF CARE IN THE HANDLING OF OIL TO AVOID SPILLS.

MR. CHAIRMAN, THERE IS NO QUESTION BUT THAT THE PRIMARY MOTIVATION BEHIND THE ADMINISTRATION'S SUPERFUND BILL WAS TO CREATE A REASONABLE AND EFFECTIVE SCHEME FOR LIABILITY, FINANCIAL RESPONSIBILITY, AND COMPENSATION FOR OIL LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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POLLUTION AFTER IT HAS OCCURRED. THE ADMINISTRATION WOULD HOPE THAT IT WOULD BE VIEWED IN THAT LIGHT. THERE ARE CERTAIN ASPECTS OF THE ADMINISTRATION'S PROPOSAL WHICH WOULD, WE THINK, ENCOURAGE HIGHER STANDARDS OF CARE, ALTHOUGH, I REPEAT, THAT WAS NOT THE PRIMARY PURPOSE OF OUR PROPOSAL.

FOR EXAMPLE, THE ADMINISTRATION BILL PUTS THE WEIGHT OF THE FEDERAL GOVERNMENT BEHIND EACH OF WHAT MAY BE A MULTITUDE OF CLAIMANTS WITH VARYING SIZED CLAIMS. IT WOULD NO LONGER BE NECESSARY FOR EACH CLAIMANT TO, AT WORST, BE CAST TO HIS OWN DEVICES TO RECOVER DAMAGES WHEN HIS COSTS MIGHT WELL EXCEED HIS RECOVERY, OR AT BEST, JOIN HIS CLAIM IN A CLASS ACTION AGAINST THE POLLUTER. NO LONGER NEED A CLAIMANT PROVE NEGLIGENCE ON THE PART OF A POLLUTER. NO LONGER WILL A POLLUTER HAVE THE OPPORTUNITY TO MANEUVER THE LEGAL PROCESS SO AS TO DELAY OR PREVENT PROMPT PAYMENT OF REASONABLE CLAIMS. SHOULD HE DO SO, HE WILL FIND HIMSELF ALSO PAYING ADMINISTRATIVE COSTS, ATTORNEY'S FEES, AND INTEREST. I WOULD CERTAINLY HOPE THAT THESE FEATURES WOULD ENCOURAGE THAT HIGHER STANDARD OF CARE WHICH YOU QUITE RIGHTLY DESIRE, MR. CHAIRMAN.

THE MEMBERS OF THE SUBCOMMITTEE ARE, I AM SURE, AWARE OF THE RECENT CONSULTATIONS AND CORRESPONDENCE BETWEEN YOU, MR. CHAIRMAN, AND SECRETARY VANCE, IN CONNECTION WITH THE RECENT ENACTMENT OF THE CLEAN WATER ACT OF 1977- THOSE CANDID CONSULTATION HAVE BROUGHT US A LONG WAY TOWARD RESOLVING THE ISSUES NOTED BY THE PRESIDENT WHEN HE SIGNED THE CLEAN WATER ACT. THE ADMINISTRATION FULLY RECOGNIZES YOUR CONCERN, MR. CHAIRMAN, AS TO THE STANDARD

OF CARE TAKEN IN THE MOVEMENT OF OIL AND OTHER HAZARDOUS SUBSTANCES, AND, INDEED, THE ADMINISTRATION WHOLEHEARTEDLY SHARES THAT CONCERN. LET ME ASSURE YOU THAT THE ADMINIS-

TRATION HAS NOT CEASED ITS EFFORTS AT HOME AND ABROAD TO
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IMPROVE THAT STANDARD OF CARE. SOME STEPS, QUITE SUCCESSFUL IN OUR VIEW, HAVE ALREADY BEEN TAKEN, AND OTHERS ARE IN TRAIN.

IN FEBRUARY, AT THE INITIATIVE OF THE UNITED STATES, THE IMCO CONFERENCE ON TANKER SAFETY AND POLLUTION PREVENTION ELABORATED, WITHOUT DISSENTING VOTE, SUBSTANTIALLY IMPROVED INTERNATIONAL STANDARDS FOR THE CONSTRUCTION, EQUIPMENT, CERTIFICATION, INSPECTION AND OPERATION OF TANKERS. THE COAST GUARD IS WORKING VERY RAPIDLY WITH A VIEW TOWARD STRENGTHENING OUR DOMESTIC REGULATIONS TAKING THE NEW STANDARDS INTO ACCOUNT. NEXT JUNE IMCO WILL HOLD A PLENIPOTENTIARY CONFERENCE DEVOTED TO IMPROVING THE INTERNATIONAL STANDARDS APPLICABLE TO THE TRAINING AND CERTIFICATION OF SEAFARERS. ONE CAN NEVER READ THE HUMAN ELEMENT OUT OF THE EQUATION. WE ARE CONFIDENT THAT THIS CONFERENCE WILL ADOPT MEANINGFUL IMPROVEMENTS TO THE QUALIFICATIONS REQUIRED OF THE MARINER WHO CARRIES THE MATERIALS ABOUT WHICH WE ARE SO CONCERNED.

RELATED, MR. CHAIRMAN, IS YOUR RECENT LETTER TO SECRETARY VANCE WHICH EXPRESSED CONCERN WITH CERTAIN PROVISIONS OF THE CURRENT NEGOTIATING TEXT BEFORE THE LAW OF THE SEA CONFERENCE, WHICH IS NOW IN SESSION IN GENEVA. THE CONFERENCE, REGRETTABLY, WAS BESET WITH PROCEDURAL DIFFICULTIES DURING ITS FIRST TWO WEEKS, HAVING TO DO WITH THE PRESIDENCY OF THE CONFERENCE. WE HOPE THAT THOSE DIFFICULTIES HAVE NOW BEEN OVERCOME AND THAT THE CONFERENCE CAN MOVE AHEAD WITH THE IMPORTANT WORK IT HAS LEFT BEFORE IT. ON A MORE HAPPY NOTE, THE SLOW BEGINNING HAS PERMITTED A TASK FORCE FORMED BY AMBASSADOR ELLIOT RICHARDSON TO DEVOTE ITS FULL ATTENTION TO THE QUESTION OF REOPENING THE PORTIONS OF THE NEGOTIATING TEXT DEALING WITH THE
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PROTECTION OF THE MARINE ENVIRONMENT. WE WERE VERY PLEASED THAT A MEMBER OF YOUR STAFF, MR. CHAIRMAN, WAS ABLE TO TRAVEL TO GENEVA AND PLAY AN IMPORTANT AND MOST CONSTRUCTIVE ROLE IN THE WORK OF THIS TASK FORCE.

WHILE I HAVE NOT YET SEEN THE FINAL REPORT OF THE TASK

FORCE,MR. CHAIRMAN, ITS INITIAL WORK HAS GIVEN ME HOPE THAT MANY IF NOT ALL OF YOUR CONCERNS MIGHT BE SATISFIED. I MUST HASTEN TO ADD THAT THERE ARE SERIOUS AND QUITE REAL QUESTIONS AS TO WHETHER, AS A TACTICAL MATTER, IT WOULD BE IN OUR INTEREST, AND IN THE INTEREST OF ENVIRONMENTAL PROTECTION, TO REOPEN A PORTION OF THE NEGOTIATING TEXT WHICH HAS LARGELY BEEN ASSUMED TO BE CLOSED. ON THE OTHER HAND, MR. CHAIRMAN, WE FEEL THAT A CAREFUL ANALYSIS OF THE COMPLICATED PROVISIONS OF THE NEGOTIATING TEXT, COUPLED

WITH THE GENERALLY UNDERSTOOD LEGISLATIVE HISTORY OF THE TEXT, COULD GO A VERY LONG WAY TOWARD MEETING YOUR QUITE LEGITIMATE CONCERNS. I DO NOT HAVE TIME TO GO INTO GREATER DETAIL ON THESE QUESTIONS HERE, BUT I WILL NOTE THAT WE HAVE UNDERTAKEN CONSTRUCTIVE DISCUSSIONS WITH YOUR STAFF ON THIS MATTER, AND I AND MY STAFF ARE ALWAYS AVAILABLE TO CONTINUE THOSE DISCUSSIONS. I MUST STRESS THAT THE NEGOTIATING SITUATION, IN VIEW OF THE RISKS ASSOCIATED WITH REOPENING THESE PARTS OF THE TEXT, MAY NOT PERMIT AMBASSADOR RICHARDSON TO MAKE SUCH A FORMAL MOVE. PLEASE BE ASSURED THAT WE WILL KEEP YOUR STAFF INFORMED AS TO FURTHER DEVELOPMENTS ALONG THIS LINE.

FINALLY, MR. CHAIRMAN, ON THE QUESTION OF ENCOURAGING AN IMPROVED STANDARD OF CARE, I WOULD LIKE TO REPORT THAT I HAVE INSTRUCTED MY STAFF, IN COORDINATION WITH OTHER DEPARTMENTS AND AGENCIES, TO TAKE A NEW LOOK AT THE BROAD QUESTION OF OTHER STEPS WHICH MIGHT BE AVAILABLE TO THE ADMINISTRATION TO FURTHER INTERNATIONAL ACCEPTANCE OF THE HIGHEST STANDARDS OF CARE IN THE HANDLING AND TRANSPORT LIMITED OFFICIAL USE
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OF HARMFUL SUBSTANCES, TO WHICH THE ADMINISTRATION, ALONG WITH YOU, ATTACHES SO MUCH IMPORTANCE. I REMAIN CONVINCED, MR. CHAIRMAN, THAT THE STEPS TAKEN AND INITIATED, AT HOME AND ABROAD, WHEN BROUGHT TO FRUITION, WILL DEMONSTRATE THAT THE INTERNATIONAL COMMUNITY SHARES OUR CONCERN.

MEANWHILE, MR. CHAIRMAN, THE ADMINISTRATION STRONGLY URGES MOVING AHEAD WITH THOSE COMPONENTS OF THE FINAL PACKAGE WHICH LAY WITHIN OUR GRASP -- INCLUDING THE EARLY ENACTMENT OF A COMPREHENSIVE LIABILITY AND COMPENSATION REGIME FOR OIL POLLUTION DAMAGE AS PROPOSED BY THE ADMINISTRATION.

THANK YOU, MR. CHAIRMAN. I WOULD BE HAPPY TO ANSWER ANY QUESTION YOU OR THE MEMBERS OF THE SUBCOMMITTEE MIGHT HAVE.

END QUOTE. VANCE

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